

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Davis Analyst: Jeff Garnier Bill Number: AB 2096

Related Bills: See Leg. History Telephone: 845-5322 Introduced Date: February 22, 2K

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Credit for Long-Term Care for Senior Family Members

### SUMMARY

This bill would provide for a \$500 credit to taxpayers who provide long-term care to family or household members, 65 years of age or older, who reside with the taxpayer. A family member cannot be the taxpayer or the taxpayer's spouse.

### EFFECTIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and apply to taxable years beginning on or after January 1, 2000.

### LEGISLATIVE HISTORY

AB 2268 (2000) would allow a \$500 credit to taxpayers for providing long-term care to the taxpayer, taxpayer's spouse or a dependent of the taxpayer who is certified as needing long term care. AB 2281 (2000) would allow 25% of the cost of long-term insurance as a deduction starting in the 2002 tax year and incrementally increasing to 100% beginning in the 2007 tax year.

### SPECIFIC FINDINGS

Under **federal law** long-term care services are defined as services necessary to diagnose, prevent, cure, treat, mitigate, rehabilitate and maintain or to provide personal services to a chronically ill individual. A chronically ill individual is generally defined as an individual certified annually by a licensed health care practitioner as being unable to perform (without substantial assistance) at least two of the following daily living activities: eating, toileting, transferring, bathing, dressing and continence, or requires substantial supervision to protect such individual from health and safety concerns due to severe cognitive impairment.

Current **federal law** specifically allows a deduction for medical expenses for the unreimbursed expenses for qualified long-term care services provided to the taxpayer, the taxpayer's spouse or the taxpayer's dependents (subject to the present-law floor of 7.5% of adjusted gross income). Amounts received under a long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other periodic basis) are treated as reimbursement for expenses actually incurred for medical care.

### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> X PENDING

### Department Director

### Date

Alan Hunter for GHG

3/29/00

Long-term care insurance premiums, like medical care insurance premiums, are explicitly treated as medical expenses and are deductible on a graduated scale based on the individual's age before the close of the taxable year.

<u>Age of Individual</u>	<u>Maximum Deduction</u>
40 or less	\$200
More than 40 but less than 50	375
More than 50 but less than 60	750
More than 60 but less than 70	2,000
More than 70	2,500

Current law also excludes from gross income of the employee any employer contributions to accident and health plans, except for contributions to cafeteria plans or "flexible spending arrangements," as defined. In addition, current law excludes from gross income the receipt of benefits from long-term care insurance.

Current **federal law** imposes an information reporting requirement on insurance companies paying long-term care benefits. In addition to the normal reporting requirements (identification of the recipients and amounts paid out by the company), the insurance company also must include the type of policy issued to the recipient. A penalty excise tax may be imposed on issuers of long-term care insurance companies that fail to satisfy the above requirements.

Current **California tax law** conforms to federal tax law concerning long-term care.

**This bill** would provide a credit of \$500 to a taxpayer who provides long-term care for an eligible family member of the taxpayer in the taxpayer's principal place of residence. Eligible family member means all of the following:

- An individual 65 or older,
- An individual described in IRC section) (Dependent Defined), which lineal ancestors and descendants, siblings, aunts and uncles of the taxpayer or taxpayer's spouse. Dependents can also include step and adopted relations. IRC section 152(a)(9) also includes any individual who is a member of the taxpayer's household and whose principal place of abode is the home of the taxpayer. The definition of dependent, IRC section 152(a)(1) through (9) does not include the taxpayer or the taxpayer's spouse. **This bill** only requires the eligible family member to be listed in IRC section 152(a). It would not require the eligible family member to be a dependent of the taxpayer.
- An individual certified by a licensed physician as unable to perform at least three activities of daily living, such as dressing without substantial assistance, for at least six months.

Under **this bill** long-term care would be defined under the Welfare and Institution Code, in part, as a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities.

Where the credit exceeds the net tax, **this bill** would provide for the carryover of the credit until it is exhausted.

### Policy Considerations

This credit would not be limited to taxpayers who are residents of California.

### Implementation Considerations

Because this bill does not quantify the amount, either in dollars expended or in quantity of hours given, of long term care that must be provided or specify a minimum amount of time an eligible family member must reside at a taxpayer's principal residence, it is unclear how many different taxpayers may be able to claim the \$500 credit for the same eligible family member. Additionally, it is unclear if two taxpayers having the same principal residence may be able to each take the \$500 credit for the same eligible family member. Lastly, it is unclear if a taxpayer who is providing long-term care to two eligible family members would be allowed to claim two \$500 credits.

This bill would require the eligible family member to be certified by a licensed physician as being unable to perform at least three activities of daily living for at least six months. It is unclear if the six-month period must be within one taxable year, and if not, would the taxpayer qualify for the credit in both years. Additionally, credits or deductions that require certification also contain a provision requiring the taxpayer to retain the certification and submit it to the Franchise Tax Board upon request. This bill does not contain such a provision.

This bill would allow an unlimited carryover for the \$500 credit. Recently enacted credits have limited the number of carryover years since credits typically are exhausted within eight years. Without a carryover limitation, the department would be required to list the credit indefinitely on tax forms.

Department staff is available to work with the author's office to resolve these issues.

### Technical Considerations

Because this bill would not require the eligible family member to be the dependent of the taxpayer, a live-in paid caregiver may be able claim the credit. This is unclear because the bill uses the term eligible "family" member and then defines it as including individuals with no relation to the taxpayer. Non-family members are included in IRC Section 152(a) to cover those individuals for whom the taxpayer contributes more than one of their support. The author's staff has indicated that the bill will be amended to exclude non-family members as an eligible individual.

There is an apparent typographical error in subdivision (a) of the bill defining the "principal" residence of the taxpayer, where the word "principle" is erroneously used instead.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

The credit is limited to \$500 per eligible family member, and that the eligible family member must reside with the taxpayer for over half of the year.

Revenue losses under the Personal Income Tax Law for a stand-alone state credit are estimated as follows:

Revenue Impact AB 2096		
For Taxable Years Beginning 1/1/2000		
Assumed Enactment After 6/30/00		
(In Millions)		
2000-01	2001-02	2002-03
-\$20	-\$18	-\$20

This analysis does not reflect any maximum credit value and does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Revenue Discussion:

The impact of this bill would depend upon the number of taxpayers eligible to claim the credit (estimated at 71,000), the average credit claimed, and the average credit applied against available tax liabilities.

This estimate is based on a proration of the federal estimate calculated by the U.S. Treasury for a similar proposed federal credit, with adjustments for the differences between the federal proposal and this proposal.

Starting with the estimated federal impact on liabilities under the federal proposal:

1. This estimate assumes that no similar federal legislation is adopted. If federal legislation were in place, the California revenue loss estimates would need to be revised upward.
2. The California eligible population is assumed to be 11% of the nation.
3. Because California tax rates are lower than federal rates, it is assumed that a state credit absorption rate would be 75% of the federal (a greater portion of the calculated credit would not be applied because of insufficient tax liabilities).
4. Because of the absence of income caps, it is assumed that the eligible population would be 7.9% greater than if the income caps under the proposed federal legislation were applied. This assumption is based on the department's Personal Income Tax model for taxpayers above the federal income caps.

5. For the additional 7.9%, it is assumed that each taxpayer would be able to absorb the full credit.
6. The proposed \$1,000 federal credit would allow a taxpayer to take the credit on him or herself (presumably by hiring a caretaker) and would not limit the credit to the elderly. It is estimated that approximately 60% of the proposed federal credit would benefit elderly people and that 75% of the people who would receive the credit would be caretakers. Adjustments were made based on these percentages to account for the differences between the state and federal proposal for qualifying individuals.

BOARD POSITION

Pending.